IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MARCHELLO REMBERT, Defendant.	No. 15-CR-2038-LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdicts should be.

INSTRUCTION NO. 3

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you just verdicts, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 4

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses, stipulations of the parties and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by the lawyers are not evidence.
2. Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
3. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
5. Anything you saw or heard about this case outside the courtroom is not evidence.

During the trial, documents and objects were referred to but were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 5

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 6

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have just stated. You must therefore treat those facts as having been proved.

INSTRUCTION NO. 7

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 8

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

INSTRUCTION NO. 9

You have heard evidence that the defendant previously possessed a firearm. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, then you may consider it to help you decide whether the defendant knowingly and intentionally possessed the firearm at issue in this case and whether his possession of that firearm resulted from mistake or accident. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of a prior act only on the issue stated above.

INSTRUCTION NO. 10

You have also heard evidence that the defendant previously possessed marijuana with intent to deliver. You may consider this evidence only if you unanimously find it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable. This is a lower standard than proof beyond a reasonable doubt.

If you find this evidence has been proved, then you may consider it to help you decide whether the defendant intended to distribute cocaine base. You should give it the weight and value you believe it is entitled to receive. If you find that this evidence has not been proved, you must disregard it.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such an act in this case. You may not convict a person simply because you believe he may have committed a similar act in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of a prior act only on the issue stated above.

INSTRUCTION NO. 11

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become experts in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used and all the other evidence in the case.

INSTRUCTION NO. 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdicts. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 13

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 14

The Indictment in this case charges the defendant with two crimes.

Under Count 1, the Indictment charges that on or about June 4, 2015, in the Northern District of Iowa, the defendant did knowingly possess in and affecting interstate commerce a firearm, namely a Ruger model P95 9mm pistol, and that his possession of the firearm was illegal because he was a felon.

Under Count 2, the Indictment charges that on or about June 4, 2015, in the Northern District of Iowa, the defendant did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of cocaine base.

The defendant has pleaded not guilty to these charges. Keep in mind that each count charges a separate crime. You must consider each count separately and return a separate verdict for each count.

As I told you at the beginning of the trial, the Indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each element of the crimes charged.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdicts.

INSTRUCTION NO. 15

The crime of being a felon in possession of a firearm, as charged in Count 1 of the Indictment, has three elements, which are:

One, on or about June 4, 2015, the defendant knowingly possessed a firearm, that is, a Ruger model P95 9mm pistol;

Two, at the time the defendant possessed the firearm, he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year; and

Three, the firearm was transported across a state line at some time during or before the defendant's possession of it.

The government and the defendant have stipulated, that is, agreed that the defendant has been convicted of a crime punishable by imprisonment for more than one year under the laws of the State of Iowa. Therefore, you must consider the second element as proven.

If you have found beyond a reasonable doubt that the firearm in question was manufactured in a state other than Iowa and that the defendant possessed that firearm in the State of Iowa, then you may, but are not required to, find that it was transported across a state line.

The term "firearm" means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

If the government has proven all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 1. Otherwise, you must find the defendant not guilty of the crime charged under Count 1.

INSTRUCTION NO. 16

The crime of possession of cocaine base with intent to distribute, as charged in Count 2 of the Indictment, has three elements, which are:

One, on or about June 4, 2015, the defendant was in possession of cocaine base (also known as "crack cocaine");

Two, the defendant knew that he was in possession of a controlled substance; and

Three, the defendant intended to distribute some or all of the cocaine base to another person.

It is not necessary that the government prove the defendant knew the substance was cocaine base, as long as he knew the substance was some type of controlled substance. It does not matter whether the defendant knew the identity of the controlled substance.

If the government has proven all of these elements beyond a reasonable doubt, then you must find the defendant guilty of the crime charged under Count 2. Otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NO. 17

If your verdict under Instruction No. 16 is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Instruction No. 16, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple possession of a controlled substance under this instruction.

The crime of simple possession of a controlled substance has two elements, which are:

One, on or about June 4, 2015, the defendant was in possession of cocaine base (also known as "crack cocaine"); and

Two, the defendant knew that he was in possession of a controlled substance.

For you to find the defendant guilty of this crime, a lesser-included offense under Count 2, the government must prove all of these elements beyond a reasonable doubt. Otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 18

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word "possession" has been used in these instructions it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 19

You are instructed as a matter of law that cocaine base is a Schedule II controlled substance. During this trial, you have heard the terms "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" referred to interchangeably. You are instructed that "crack cocaine" and "a mixture or substance containing a detectable amount of cocaine base" refer to the same substance. You must ascertain whether or not the substance in question as to Count 2 was cocaine base. In so doing, you may consider all the evidence in the case which may aid the determination of that issue.

INSTRUCTION NO. 20

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of distribution of a controlled substance and does not concern itself with any need for a "sale" to occur.

INSTRUCTION NO. 21

It is not necessary for the government to prove that the defendant knew that it was illegal to have the firearm or ammunition in his possession within the meaning of the law. Nor is it necessary for the government to prove who owned the firearm or ammunition at any time. The statute speaks in terms of possession, not ownership.

INSTRUCTION NO. 22

An act is done "knowingly" if a defendant is aware of the act and did not act through ignorance, mistake or accident. Knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the defendant's knowledge.

INSTRUCTION NO. 23

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear, and thus be able to give, direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or the omissions were made. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have previously mentioned, it is entirely up to you to decide what facts to find from the evidence.

The possession of a large quantity of cocaine base, its high purity level, the presence of paraphernalia used to aid in the distribution of drugs, large sums of unexplained cash or the presence of firearms may support an inference of an intent to distribute. Thus, in determining whether the defendant possessed cocaine base with the intent to distribute, you may but are not required to infer an intent to distribute if one or more of these factors are established by the evidence that you find credible.

INSTRUCTION NO. 24

You will note that the Indictment charges that offenses were committed "on or about June 4, 2015." The government need not prove with certainty the exact date or the exact time period of the offenses charged. It is sufficient if the evidence establishes that the offenses occurred within a reasonable time of the date or period of time alleged in the Indictment.

INSTRUCTION NO. 25

You must make your decisions based on what you recall of the evidence. You will not have a written transcript to consult, and the court reporter cannot read back lengthy testimony.

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 26

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because each of your verdicts—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decisions, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, your verdicts must be based solely on the evidence and on the law that I have given to you in my instructions. Each verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdicts should be—that is entirely for you to decide.

INSTRUCTION NO. 27

Attached to these instructions you will find the Verdict Forms. These are simply the written notices of the decisions that you reach in this case. The answers to the Verdict Forms must be the unanimous decisions of the Jury.

You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Forms, your foreperson will fill out the Verdict Forms, sign and date them and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Forms in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the Jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Forms in accord with the evidence and these instructions.

January 5, 2016
Date

Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa